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7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 DR. TAM NGUYEN,

11 Plaintiff,

12 vs.

Case No. 2:12-cv-01527-GMN-GWF

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

13 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a political subdivision of the
14 State of Nevada; Police Officer NAKAGAWA
(LVMPD #5476), individually and as police
15 officer employed by the Las Vegas
Metropolitan Police Department; Police Officer
16 GEIGER (LVMPD #9864), individually and as
police officer employed by the Las Vegas
Metropolitan Police Department; POLICE
17 OFFICER JOHN DOES I-XX; and JOHN
DOES I-XX, inclusive,

18 Defendants.

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20 Defendants Las Vegas Metropolitan Police Department, Police Officer Nakagawa, and
21 Police Officer Greiger (“Answering Defendants”), by and through their counsel, Kaempfer
22 Crowell Renshaw Gronauer & Fiorentino, and for their answers to Plaintiff’s Complaint on file
23 herein, answers, denies and alleges as follows:

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PARTIES

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2 1. Answering Paragraph 1 of Plaintiff's Complaint, Answering Defendants are
3 without knowledge or information sufficient to form a belief as to the truth of the allegations
4 contained in said paragraph and therefore deny the same.

5 2. Answering Paragraph 2 of Plaintiff's Complaint, Answering Defendants admit the
6 allegations contained therein.

7 3. Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendants admit the
8 allegations contained therein.

9 4. Answering Paragraph 4 of Plaintiff's Complaint, Answering Defendants admit the
10 allegations contained therein.

11 5. Answering Paragraph 5 of Plaintiff's Complaint, Answering Defendants are
12 without knowledge or information sufficient to form a belief as to the truth of the allegations
13 contained in said paragraph and therefore deny the same.

14 6. Answering Paragraph 6 of Plaintiff's Complaint, Answering Defendants are
15 without knowledge or information sufficient to form a belief as to the truth of the allegations
16 contained in said paragraph and therefore deny the same.

FACTS COMMON TO ALL CAUSES OF ACTION

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18 7. Answering Paragraph 7 of Plaintiff's Complaint, Answering Defendants admit the
19 allegations contained therein.

20 8. Answering Paragraph 8 of Plaintiff's Complaint, Answering Defendants are
21 without knowledge or information sufficient to form a belief as to the truth of the allegations
22 contained in said paragraph and therefore deny the same.

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1 9. Answering Paragraph 9 of Plaintiff's Complaint, Answering Defendants are
2 without knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in said paragraph and therefore deny the same.

4 10. Answering Paragraph 10 of Plaintiff's Complaint, Answering Defendants are
5 without knowledge or information sufficient to form a belief as to the truth of the allegations
6 contained in said paragraph and therefore deny the same.

7 11. Answering Paragraph 11 of Plaintiff's Complaint, Answering Defendants are
8 without knowledge or information sufficient to form a belief as to the truth of the allegations
9 contained in said paragraph and therefore deny the same.

10 12. Answering Paragraph 12 of Plaintiff's Complaint, Answering Defendants allege
11 that the allegations contained therein call for non-factual legal conclusions and Answering
12 Defendants are therefore not required to answer the same.

13 13. Answering Paragraph 13 of Plaintiff's Complaint, Answering Defendants deny
14 the allegations contained therein.

15 14. Answering Paragraph 14 of Plaintiff's Complaint, Answering Defendants are
16 without knowledge or information sufficient to form a belief as to the truth of the allegations
17 contained in said paragraph and therefore deny the same.

18 15. Answering Paragraph 15 of Plaintiff's Complaint, Answering Defendants are
19 without knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained in said paragraph and therefore deny the same.

21 16. Answering Paragraph 16 of Plaintiff's Complaint, Answering Defendants are
22 without knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in said paragraph and therefore deny the same.

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1 17. Answering Paragraph 17 of Plaintiff's Complaint, Answering Defendants are
2 without knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in said paragraph and therefore deny the same.

4 18. Answering Paragraph 18 of Plaintiff's Complaint, Answering Defendants are
5 without knowledge or information sufficient to form a belief as to the truth of the allegations
6 contained in said paragraph and therefore deny the same.

7 **FIRST CLAIM FOR RELIEF**

8 **(Violation of Constitutional Rights)**

9 19. Answering Paragraph 19 of Plaintiff's Complaint, Answering Defendants repeat
10 and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by
11 reference as though fully set forth herein.

12 20. Answering Paragraph 20 of Plaintiff's Complaint, Answering Defendants deny
13 the allegations contained therein.

14 21. Answering Paragraph 21 of Plaintiff's Complaint, Answering Defendants deny
15 the allegations contained therein.

16 22. Answering Paragraph 22 of Plaintiff's Complaint, Answering Defendants deny
17 the allegations contained therein.

18 23. Answering Paragraph 23 of Plaintiff's Complaint, Answering Defendants deny
19 the allegations contained therein.

20 24. Answering Paragraph 24 of Plaintiff's Complaint, Answering Defendants deny
21 the allegations contained therein.

22 25. Answering Paragraph 25 of Plaintiff's Complaint, Answering Defendants deny
23 the allegations contained therein.

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1 36. Answering Paragraph 36 of Plaintiff's Complaint, Answering Defendants deny
2 the allegations contained therein.

3 37. Answering Paragraph 37 of Plaintiff's Complaint, Answering Defendants deny
4 the allegations contained therein.

5 38. Answering Paragraph 38 of Plaintiff's Complaint, Answering Defendants deny
6 the allegations contained therein.

7 39. Answering Paragraph 39 of Plaintiff's Complaint, Answering Defendants deny
8 the allegations contained therein.

9 **THIRD CLAIM FOR RELIEF**

10 **(False Arrest/False Imprisonment)**

11 40. Answering Paragraph 40 of Plaintiff's Complaint, Answering Defendants repeat
12 and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by
13 reference as though fully set forth herein.

14 41. Answering Paragraph 41 of Plaintiff's Complaint, Answering Defendants deny
15 the allegations contained therein.

16 42. Answering Paragraph 42 of Plaintiff's Complaint, Answering Defendants deny
17 the allegations contained therein.

18 43. Answering Paragraph 43 of Plaintiff's Complaint, Answering Defendants deny
19 the allegations contained therein.

20 44. Answering Paragraph 44 of Plaintiff's Complaint, Answering Defendants deny
21 the allegations contained therein.

22 45. Answering Paragraph 45 of Plaintiff's Complaint, Answering Defendants deny
23 the allegations contained therein.

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1 46. Answering Paragraph 46 of Plaintiff's Complaint, Answering Defendants deny
2 the allegations contained therein.

3 47. Answering Paragraph 47 of Plaintiff's Complaint, Answering Defendants deny
4 the allegations contained therein.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Intentional Infliction of Emotional Distress)**

7 48. Answering Paragraph 48 of Plaintiff's Complaint, Answering Defendants repeat
8 and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by
9 reference as though fully set forth herein.

10 49. Answering Paragraph 49 of Plaintiff's Complaint, Answering Defendants deny
11 the allegations contained therein.

12 50. Answering Paragraph 50 of Plaintiff's Complaint, Answering Defendants deny
13 the allegations contained therein.

14 51. Answering Paragraph 51 of Plaintiff's Complaint, Answering Defendants deny
15 the allegations contained therein.

16 **AFFIRMATIVE DEFENSES**

17 Further, as affirmative defenses to each and all of Plaintiff's alleged "causes of action,"
18 Answering Defendants allege:

19 **FIRST AFFIRMATIVE DEFENSE**

20 Plaintiff's Complaint on file herein fails to state a claim against Answering Defendants
21 upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

Answering Defendants allege that the damages, if any, suffered by Plaintiff in his Complaint were caused in whole or in part by the negligence of a third party over whom Answering Defendants had no control.

THIRD AFFIRMATIVE DEFENSE

Answering Defendants' actions were reasonable and justified under the circumstances and were privileged.

FOURTH AFFIRMATIVE DEFENSE

At all times mentioned in Plaintiff's Complaint, Answering Defendants acted under the good faith belief that their actions were legally justifiable.

FIFTH AFFIRMATIVE DEFENSE

The arrest and imprisonment of Plaintiff, if any, was completely justified and privileged under the circumstances alleged and was perfected pursuant to probable cause and reasonable cause in believing the Plaintiff had committed a criminal act.

SIXTH AFFIRMATIVE DEFENSE

There can be no recovery for punitive damages against any government official acting in his or her official capacity, pursuant to 42 U.S.C. § 1983.

SEVENTH AFFIRMATIVE DEFENSE

No award of punitive damages can be awarded against Answering Defendants under the facts and circumstances alleged in Plaintiff's Complaint.

EIGHTH AFFIRMATIVE DEFENSE

At the time and place alleged in Plaintiff's Complaint, and for a period of time prior thereto, Plaintiff did not exercise ordinary care, caution or prudence for the protection of his own safety, and the injuries and damages complained of by Plaintiff in his Complaint, if any, were

1 directly and proximately caused or contributed to by the fault, failure to act, carelessness and
 2 negligence of Plaintiff.

3 NINTH AFFIRMATIVE DEFENSE

4 At all times mentioned in Plaintiff's Complaint, Answering Defendants did not
 5 personally participate in any of the Plaintiff's alleged violations of his constitutional rights.

6 TENTH AFFIRMATIVE DEFENSE

7 To the extent Plaintiff's causes of actions against Answering Defendants sound in
 8 negligence, no recovery can be had predicated upon 42 USC § 1983.

9 ELEVENTH AFFIRMATIVE DEFENSE

10 Plaintiff's suit fails to state claim for relief as he fails to allege a violation of right,
 11 privilege, or immunity secured by the United States Constitution or by the laws of the United
 12 States.

13 TWELFTH AFFIRMATIVE DEFENSE

14 Answering Defendants did not enact or promulgate any policy, statute, ordinance or
 15 custom, policy or procedure which denied or abridged any of the Plaintiff's constitutional rights.

16 THIRTEENTH AFFIRMATIVE DEFENSE

17 Answering Defendants are qualifiedly immune from the actions alleged against them in
 18 Plaintiff's Complaint.

19 FOURTEENTH AFFIRMATIVE DEFENSE

20 The Nevada Revised Statutes, chapter 41, limits the damages that may be collectable
 21 against a political subdivision of the State of Nevada to seventy-five thousand dollars (\$75,000).

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FIFTEENTH AFFIRMATIVE DEFENSE

Answering Defendants are not subject to suit upon the facts and conclusions as stated in Plaintiff's Complaint by reason of their sovereign immunity as a political subdivision of the State of Nevada and more particularly by reason of the provisions of NRS 41.031, 41.032, 41.033.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint concerns a discretionary function of Answering Defendants for which Answering Defendants are immune.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims of a constitutional violation are unsupported in both fact and law, as Plaintiff has not alleged sufficient basis from which a constitutional interest might arise in conjunction with the alleged actions.

EIGHTEENTH AFFIRMATIVE DEFENSE

Pursuant to FRCP 11, all possible affirmative defenses may not have been alleged herein insofar as insufficient facts were available after reasonable inquiry upon the filing of Plaintiff's Complaint, and therefore, Answering Defendants reserve the right to amend their Answer to the Complaint to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Answering Defendants pray for judgment as follows:

1. That Plaintiff take nothing by virtue of his Complaint on file herein, and that the same be dismissed with prejudice;
2. For an award of reasonable attorneys fees and costs of suit incurred in the defense of this action;

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1 3. For such other and further relief that this Court may deem just and proper in the
2 premises.

3 DATED this 28th day of August, 2012.

4 KAEMPFER CROWELL RENSHAW
5 GRONAUER & FIORENTINO

6 BY: 

7 LYSSA S. ANDERSON (Nevada Bar No. 5781)
8 8345 West Sunset Road, Suite 250
9 Las Vegas, Nevada 89113
10 **Attorneys for Defendants**

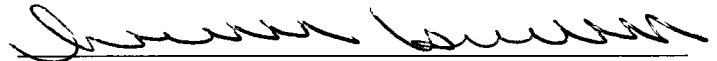
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KAEMPFER CROWELL RENSHAW
GRONAUER & FIORENTINO
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Las Vegas, Nevada 89113

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date I electronically filed the foregoing
DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT using the court's CM/ECF
system which will send notification to the following:

Cal J. Potter, III, Esq.
Potter Law Offices
1125 Shadow Lane
Las Vegas, Nevada 89102
(702) 385-1954
(702) 385-9081 - facsimile
Attorney for Plaintiff

DATED this 28TH day of August, 2012.


an employee of
Kaempfer Crowell Renshaw Gronauer & Fiorentino